

EXHIBIT 40

Restore Robotics LLC v Intuitive Surgical

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF FLORIDA
3 PANAMA CITY DIVISION

4 RESTORE ROBOTICS LLC AND
5 RESTORE ROBOTICS REPAIRS, LLC,
6 and CLIF PARKER ROBOTICS, LLC,
Plaintiffs,

CIVIL ACTION FILE

7 vs.

NO. 5:19-cv-55-TKW-MJF

8 INTUITIVE SURGICAL, INC.,
9 Defendant.

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13
14 REMOTE VIDEO DEPOSITION OF
15 SHERRY HARVEY

16 May 14, 2021

17 9:10 a.m.

18 3017 Galleria Drive

19 Metairie, Louisiana

20 Robyn Bosworth, RPR, CRR, CRC, CCR-B-2138
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1 Dr. Thomas Lavin, and Dr. Vanlangendonck.

2 Q Why did you talk to those four surgeons?

3 A The first three that I gave you are all
4 board members. The last one is a surgeon who would
5 be using the equipment.

6 Q And did you receive any objections from
7 any of the four surgeons?

8 A I did not.

9 Q Do you recall the name of the third party
10 offering the refurbishment?

11 A Restore Robotics.

12 Q At some point did you start buying the
13 refurbished instruments -- or excuse me. At some
14 point did you start using Restore Robotics to
15 refurbish the instruments at Crescent City Surgical
16 Centre?

17 A Yes.

18 Q And do you recall roughly how long that
19 Crescent City Surgical Centre used Restore Robotics
20 to refurbish the da Vinci instruments?

21 A One hour.

22 Q I'm sorry. So let me ask it a
23 different --

24 A It was one case.

25 Q Do you recall -- oh, okay.

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1 A We used one instrument.

2 Q Was everyone at Crescent City Surgical
3 satisfied with how the refurbished instrument
4 performed in that one procedure?

5 A Yes.

6 MR. BAILEY: Objection to form.

7 THE WITNESS: Yes.

8 BY MR. BERHOLD:

9 Q Why did Crescent City Surgical Centre stop
10 using Restore Robotics to refurbish instruments
11 after that first procedure?

12 A We stopped because we were notified by
13 Intuitive that we were not allowed to use those
14 instruments on the robot.

15 Q And did you keep records of your
16 communications with Intuitive Surgical regarding
17 their opposition to refurbished instruments?

18 MR. BAILEY: Objection to form.

19 THE WITNESS: Yes. That was a yes.

20 BY MR. BERHOLD:

21 Q At some point did you receive a subpoena
22 for documents in this case?

23 A Yes.

24 MR. BERHOLD: Chris, can we pull up
25 Crescent 00001.

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1 CONCIERGE TECH: Sure. Please stand by.

2 BY MR. BERHOLD:

3 Q While he's pulling up the Exhibit 1,
4 Ms. Harvey, do you recall producing documents in
5 response to a subpoena?

6 A Yes.

7 CONCIERGE TECH: Exhibit 1 has been
8 introduced and is now on the screen.

9 Ms. Harvey, if you need me to scroll for
10 anything, just let me know.

11 (Exhibit Number 1 was marked for
12 identification.)

13 THE WITNESS: Okay.

14 BY MR. BERHOLD:

15 Q Do you recognize page 1 of Exhibit 1?

16 A Yes.

17 Q What is page 1?

18 Or, excuse me, let me ask a better
19 question.

20 What is the -- what is the letter at the
21 beginning of Exhibit 1?

22 A It is just a summary of the following
23 documents.

24 Q And the letter is addressed to me,
25 Mr. Berhold.

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1 division.

2 Q So would it be fair to say that your
3 understanding of restoring an instrument would have
4 been based in part on what you heard other companies
5 engage in with respect to servicing an instrument?

6 MR. BERHOLD: Objection.

7 THE WITNESS: Yes, I've used those
8 products before, just not at Crescent City. In my
9 career, I've used restored and reprocessed items in
10 my career.

11 BY MR. BAILEY:

12 Q Now, when Restore -- your understanding of
13 what Restore did to an EndoWrist instrument in
14 taking it apart and putting it back together, did
15 you have any understanding of what exactly Restore
16 did with the instrument?

17 A Just what you just said.

18 Q How was that explained to you?

19 A That it's reversed -- it's like reverse
20 technology, taking it apart, putting the lives back
21 onto it, and putting it back together.

22 Q Were you made aware whether there was any
23 modification or alteration made to the instrument
24 when it was took apart?

25 A No.

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1 Q Were you made aware that there was a
2 additional board that was put into the instrument
3 when it was took apart?

4 A No.

5 Q Were you made aware --

6 A I don't know what a board is.

7 Q A circuit board. Circuit board --

8 A No.

9 Q -- that is --

10 A No.

11 Q Were you aware of any added electronical
12 [sic] devices placed inside of the instrument when
13 it was taken apart?

14 A No.

15 Q Were you made aware from Restore or anyone
16 else that there was a desoldering of any parts of
17 the equipment inside of the instrument when it was
18 taken apart and put back together?

19 A No.

20 Q Was it your understanding essentially that
21 the instrument was returned exactly as Intuitive had
22 manufactured it except with the only difference that
23 there were added lives?

24 A Yes.

25 Q Would you have liked to have known whether

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1 anything additional was done to the instrument, such
2 as adding additional circuit boards or doing
3 anything that changed the specifications of the
4 device?

5 A Would I have liked to have known that?

6 MR. BERHOLD: Objection.

7 BY MR. BAILEY:

8 Q Yes.

9 A I mean, I wouldn't have objected to anyone
10 giving me that information.

11 Q Well, I guess I'm trying to find out if
12 having an understanding that the instrument
13 specifications changed, would that be something that
14 you would like to know in evaluating whether a
15 device was safe?

16 A Sure.

17 Q Were you made aware at all that when
18 Restore took the instrument apart, it actually had
19 to break into the instrument?

20 A You're using the term break into. No.

21 Q Now, you mentioned earlier that -- or
22 testified earlier that you didn't have any concerns
23 about the safety with respect to using a -- a
24 Restore modified instrument; is that correct?

25 A Correct.